IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. MANIKUMAR

W.A.No.2130 of 2002

against

WP NO. 20227/04

The Chairman and
Managing Director
Tamil Nadu Housing Board
Nandanam
Chennai 600 035. .. Appellant/2ND Respondent

vs.

1.Pushpaveni .. Respondent/Writ Petitioner

2.The Government of Tamil Nadu
rep. by its Secretary
Department of Housing and
Urban Development Department
Fort St. George, Chennai 9.

3.The Special Tahsildar
Land Acquisition III
Tamil Nadu Housing Board
Chennai 35. .. Respondents/Respondents 1 and 3

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Writ Appeal is filed under Clause15 of the Letters Patent against the order of the learned single Judge of this Court dated 07.03.2002 made in W.P.No.20227 of 1994.

For appellant : Mr. S. Kasikumar, for Mr. K. Chelladurai

For respondent No.1 : Mr. T.R. Mani, Sr.Counsel for Ms. Vijayakumari Natarjan

Mr. C. Thirumaran
Government Advocate for R.2&3

JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The Chairman and Managing Director of Tamil Nadu Housing Board, Chennai 600 035, aggrieved by the order of the learned single Judge dated 07.03.2002 passed in W.P.No.20227 of 1994, filed the above appeal.

2. For the sake of convenience, we shall refer the parties as arrayed in the writ petition.

3. Questioning the land acquisition proceedings, the first respondent herein/writ petitioner, filed W.P.No.20227 of 1994 projecting various points. The learned single Judge, after finding that the award came to be passed after expiry of two years from the date of declaration made under Section 6 of the Land Acquisition Act (in short "the Act"), which is not permissible and that the impugned proceedings were 6th one, after unsuccessful five occasions in acquiring the land, quashed the entire land acquisition proceedings and allowed the writ petition. Questioning the same, as said earlier, the Tamil Nadu Housing Board/requisitioning body alone has filed this appeal and the Government have not preferred any appeal.

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4. Heard Mr. Kasikumar, learned counsel for the appellant and Mr. T.R. Mani, learned senior counsel for the contesting first respondent.

5. At the foremost, it is admitted that the reasoning of the learned Judge that the award came to be passed after expiry of two years from the date of declaration is not acceptable. It is also not in dispute that the learned Judge has not furnished the date of last mode of service, viz., service in the locality by publication under Section 6 of the Act and the date on which the award was passed. Further, it is also not in dispute that immediately after the date of publication of the declaration under Section 6, the writ petitioner/first respondent herein, filed W.P.No.20227 of 1994 and obtained an order of interim stay of all further proceedings on 08.01.1994. The interim order was in force and ultimately, on 7.03.2002, the writ petition was allowed by the learned Judge. In such circumstances neither the Tahsildar, nor the Government can be expected to pass an award during the pendency of the above writ petition. We are of the view that the said conclusion of the learned Judge cannot be sustained.

6. The other reasoning recorded by the learned Judge for quashing the acquisition proceedings is that there were successive acquisition proceedings starting from 1961 and the Department issued fresh notifications one after another. However, the fact remains that all the notifications were in accordance with law, as provided under the Land Acquisition Act and Rules made thereunder.

7. Mr. T.R. Mani, learned senior counsel appearing for the first respondent/writ petitioner by placing reliance on the details commencing from 11.10.1961, viz., the date of first 4(1) notification and ending with the order of the learned Judge dated 07.03.2002, contended that in view of various flaws and procedural violations, the impugned acquisition proceedings are liable to be quashed. At the foremost, he submitted that successive notifications without adherence to the mandatory provisions of the Act and Rules are bad. In order to appreciate the said contention, we culled out various dates and events from the particulars furnished by the writ petitioner. We reproduce the same hereunder:

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(i) According to the writ petitioner, on 09.09.1959, an extent of 3.36 acres of lands in Survey No.293/1 in Kodungaiyur Village Fort/Tondiarpet Taluk, Madras District were purchased by her for development as house sites. The said lands were sought to be acquired by the Government at the instance of the Tamil Nadu Housing Board. Section 4(1) notification dated 25.09.1961 was published in the gazette on 11.10.1961, enquiry under Section 5-A was dispensed with and declaration under Section 6(1) was gazetted on 21.11.1962, for the formation of Vyasarpadi Neighbourhood Scheme. The petitioner filed Writ Petition No.121 of 1963 challenging the same. In the meanwhile, the request of the petitioner was accepted and on 17.09.1964, lay-out for house sites was sanctioned in DTP.NNo.89/1964. On 22.04.1965, this Court allowed the said writ petition holding that direction dispensing with the enquiry under Section 5-A was without jurisdiction. On 02.08.1966, Panchayat Union, Madhavaram granted sanction for housing lay out. Pursuant to the direction of this Court, Section 5-A enquiry was held on 20.08.1966. The petitioner submitted her objections. However, on 17.06.1968, acquisition proceedings were withdrawn.

(ii) The second acquisition proceedings were initiated by issuance of fresh 4(1) notification, which was gazetted on 05.02.1975. The purpose of acquisition was said to be a housing scheme for Housing Board. Section 5-A enquiry was fixed on 29.03.1975. However, the entire acquisition proceedings were dropped on 19.09.1976.

(iii) The third acquisition proceedings were initiated by issuance of Section 4(1) notification on 20.01.1981, gezetted on 04.02.1981. After enquiry, Section 6(1) declaration was gazetted on 03.02.1984. That time, the purpose for acquisition was for implementing Sites and Services Scheme, Kodungaiyur Phase III. The petitioner filed W.P.No.2187 of 1984 challenging the acquisition proceedings on 28.02.1984. The said writ petition was heard on 21.01.1985 along with W.A.No.554 of 1984, which was filed against the order made in vacate stay petition. The Division Bench, quashed Section 6(1) declaration holding that Section 5-A enquiry was not properly held. The Division Bench also issued certain directions. The Government by letter dated 14.07.1986 issued a gazette notification cancelling the said Section 4(1) notification.

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(iv) The 4th acquisition proceedings were initiated by issuance of Section 4(1) notification dated 15.07.1986, which was gazetted on 30.07.1986. Again, the purpose for acquisition was for implementing Sites and Services Scheme, Kodungaiyur Phase III by Tamil Nadu Housing Board. Section 6(1) declaration was gazetted on 03.09.1987. The petitioner filed W.P.No.12178 of 1986 challenging the acquisition proceedings contending that Section 5-A and Rule 3(b) were not properly followed. Ultimately, on 13.09.1988 the said writ petition was allowed holding that enquiry proceedings were vitiated and reiterating the directions earlier given by the Division Bench. In the said order the learned Judge quashed declaration issued under Section 6(1) of the Act. Pursuant to the said direction, 5-A enquiry was held in the month of October/November, 1988. The petitioner also filed objections. Thereafter, the acquisition proceedings were dropped. However, according to the learned senior counsel, cancellation of Section 4(1) notification has not been ordered or gazetted.

(v) The 5th acquisition proceedings were initiated on 16.06.1993 and 4(1) notification was issued on the same day and gazetted on 21.07.1993. Here the purpose for acquisition is for Sites and Services Scheme, Kodungaiyur Phase III by Housing Board. Notification was published in two Tamil dailies, viz., "Vetrimaalai" and "Kumari Murasu" on 24 & 25.08.1993, which have no wide circulation. Though local publication was made on 27.08.1993, the same was not properly done. The objections were called for and Section 5-A enquiry was fixed on 06.04.1994. The petitioner submitted her objections on 31.03.1994, to the State Government dropped the acquisition proceedings. Enquiry was posted to 21.04.1994. The statement of Power of Attorney holder of the petitioner was recorded in the enquiry on 21.04.1994. Thereafter, Rule 3(b) enquiry was fixed on 07.07.1994. The remarks of the Tamil Nadu Housing Board were not furnished to the petitioner. Detailed objection filed by the petitioner on 06.04.1994 was ordered to be rejected by the Special Tahsildar on the ground that the Housing Board requested for rejection. The said report was forwarded to the Special Tahsildar on 07.07.1994. Declaration under Section 6 of the Act was gazetted on 25.08.1994. In the gazette the public purpose is stated to be the Housing Scheme by the Tamil Nadu Housing Board. The same was published in the newspapers, Kumarimurasu and Vettrimalai which have no wide circulation and even the publication was not properly done.

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As rightly pointed out by the learned senior counsel for the writ petitioner, the above details amply show that in spite of several infirmities, the respondents have determined to acquire the lands of the petitioner even on 5th occasion.

8. The details referred to above amply show that the authorities have determined to acquire the lands at any cost, however, without strict compliance of the provisions of the Land Acquisition Act and Rules. Though the proceedings were initiated for the first time in the year 1961, even after 45 years, they were not successful and their actions were interfered with one way or other due to non compliance of the provisions of the Act and Rules. It is true that the Government have every power to acquire any land and the official respondents have taken steps to acquire the very same land by way of successive notifications. It is not in dispute that they are expected to follow the provisions of the Act and Rules. In the case on hand, as rightly pointed out, in spite of specific directions by the learned single Judge as well as the Division Bench, the statutory provisions have not been strictly followed by the authorities. We verified the earlier orders passed by the learned single Judges and the Division Benches and we are satisfied that as rightly pointed out by the learned senior counsel for the writ petitioner, the statutory provisions have not been strictly followed by the persons concerned.

9. It is also brought to our notice that the notification was published in two dailies, viz., Vettrimalai and Kumarimurasu which have no wide circulation in the area in question. It is not in dispute that both under Sections 4(1) and 6 of the Act, publication by three modes, viz., gazette, two dailies and locality is mandatory. In N. Chelladurai vs. Government of Tamil Nadu (2000 (3) CTC 215) and A. Thagapalam vs. Secretary to Government (2006 (3) MLJ 357), Division Bench of this Court has held that enquiry under Section 5-A of the Act cannot be conducted on the basis of publication made in dailies, which had no circulation in the locality. No doubt, the learned Government Advocate has brought to our notice the unreported decision of this Court dated 24.03.2006 in W.A.Nos.261, 262, 319 and 320 of 2006, wherein their Lordships have upheld the publication effected in newspapers Makkalkural, Dhinakaran and Kumarimurasu. In the case before the Division Bench, learned Additional Advocate General by placing reliance on the relevant

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materials submitted that those newspapers had wide circulation in the areas concerned. In our case, there is no specific assertion that the newspapers, Vettrimalai and Kumarimurasu had wide circulation in the area, where the lands are situate. In the absence of such particulars, it cannot be claimed that the publication was effected by means of three modes in accordance with the Act and the Rules.

10. Learned senior counsel for the writ petitioner attacked Section 5-A enquiry as a mere farce by showing relevant proceedings of the Special Tahsildar, who conducted the said enquiry. A perusal of the files shows that in spite of valid objection by the land owner, without considering the same and without making remarks, the Managing Director, Tamil Nadu Housing Board recommended to the Government for passing of declaration under Section 6 of the Act. As rightly pointed out, conducting enquiry under Section 5-A is not a mere formality particularly when the land owner submit his/her objection within the prescribed time. If the objections are within the time and the requisitioning body offers its remarks as per Section 5-A read with Rule 3(b) now 4(b), it is incumbent on the Land Acquisition Officer to conduct further enquiry, ascertain views of the land owner with reference to the remarks of the requisitioning body and submit a report to the Government along with his views and hence, the failure on the part of the Land Acquisition Officer to follow the said procedure vitiates the acquisition proceedings.

11. Learned senior counsel for the writ petitioner has also pointed out that though the respondents initiated acquisition proceedings on five occasions, they have not spelt out the exact public purpose and according to him, they are not consistent with the object sought to be achieved by initiating the impugned acquisition proceedings. As rightly pointed out, the perusal of the records shows that in 1961, the notification was issued stating that the lands were required for "Vyasarpaid Neighbourhood Scheme" but, the same was withdrawn in 1968. In 1975, the very same lands were notified for Housing Scheme for the Housing Board and the proceedings were dropped in 1976. In the third acquisition proceedings, the respondents stated that the purpose of acquisition was for implementing "Sites and Services Scheme, Kodungaiyur Phase III". The notification in that case came to be cancelled in 1986. On the 4th occasion, they mentioned that the purpose was for "Sites and Services Scheme, Kodungaiyur

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Phase III". The said notification was also cancelled on 17.03.1989 and notification for dropping the same has not been issued or gazetted. On the 5th occasion, they once again mentioned that the purpose is for "Sites and Service Scheme, Kodungaiyur Phase III". In such circumstances, in the absence of exact public purpose, the objection raised by the learned senior counsel for the writ petitioner cannot be taken lightly.

12. Though the learned counsel appearing for the Housing Board submitted that irregularities pointed out are minor in nature, in the light of our detailed discussion, we are satisfied that the authorities have not strictly adhered to the provisions of the Act and the Rules, particularly when there were earlier orders by single Judges as well as Division Bench. Though in the impugned order the learned single Judge has not gone into all these material aspects, in the light of our above discussion, we are of the view that the respondents, viz., Government and Housing Board are not permitted to proceed afresh. As rightly pointed out, the petitioner / land owner undoubtedly has undergone mental agony and strain from 1961, because of the successive acquisition proceedings. We are also satisfied that the acquisition proceedings were not carried out in good faith and the proceedings lack bona fide. It is also brought to our notice that even according to the Additional Secretary to Government, Housing and Urban Development Department, the Scheme itself has now been dropped as not viable in the present situation, vide para-22 of the counter affidavit filed by the Additional Secretary to Government, Housing and Urban Development Department in w.P.No.20227 of 1994.

Under these circumstances, we do not find any valid ground for interference. In view of the reasons mentioned in the earlier paragraphs, though the learned single Judge has not gone into those aspects, the Government and the Housing Board are not permitted to initiate fresh proceedings once again though they are entitled to under law, in view of the peculiar factual

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details mentioned above. The writ appeal is dismissed with the above direction. No costs.

kh

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary
   Government of Tamil Nadu
   Department of Housing and
   Urban Development Department
   Fort St. George, Chennai 9.

2. The Special Tahsildar
   Land Acquisition III
   Tamil Nadu Housing Board
   Chennai 35.

+ one cc to Mr. K. Chelladurai, Advocate sr no. 41482

+ one cc to Mr. S. Vijayakumar Natarajan, Advocate sr no. 41506

+ one cc to the Government Pleader sr no. 41767

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TJL(CO)

NM(12.09.2006)

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